IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 42 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

G S KRISHNAVATI VAHUJI MAHARAJKALYANRAIJI TEMPLE

Appearance:

1. WEALTH TAX REFERENCE No. 42 of 1991
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 21/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the Commissioner of Wealth-tax, Baroda, the following questions have been referred to this court for its opinion under the provisions of sec. 27(3) of the Wealth-tax Act, 1957 (hereinafter referred to as 'the Act').

1. Whether, on the facts and in the law, the determination of the value of the property by Commissioner of Wealth-tax (Appeals) as confirmed by the Appellate Tribunal is correct?

2. Whether, in law and on facts, only 1000 sq.mtr. was required to be valued at the rate adopted by the Wealth-tax Officer but 10090 sq.mtr. was required to be valued at the rate of Rs. 10 per sq.yd.?

3 Whether, in law and on facts, the value of Rs. 7,87,658/- for A.Y. 1979-80 and Rs. 9,17,638/for A.Ys. 1980-81 and 1981-82 adopted by the Commissioner of Wealth-tax (Appeals) is correct?

2. Shri M.R. Bhatt, Sr. Standing Counsel for the Central Government, has appeared for the applicant, whereas nobody has appeared for the respondent-assessee, though served.

3. The facts, in a nutshell, giving rise to the reference application are as under :

4. The respondent-assessee was having open land admeasuring 11090.33 sq.mtrs. The said land was covered under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the Ceiling Act'). The Wealth-tax Officer, relying upon the report of the Valuation Officer, valued the entire land at the rate of Rs. 33 per sq.yd. for AY 1979-80 and at Rs. 48 per sq.yd. for AY 1980-81. The Assessing Officer had valued the entire land in question at Rs. 17 lacs.

5. It was the case of the assessee that, as the land in question was covered under the provisions of the Ceiling Act, it was not open to the assessee to sell the land in question to any one, and according to the

provisions of the Ceiling Act, the assessee was to get Rs. 10 per sq.yd. from the Government and, therefore, the land in question ought to have been valued at the rate of Rs. 10 per sq.yd. Being aggrieved by the assessment order, the assessee had filed an appeal before the Commissioner of Wealth-tax (Appeals). The appeals filed by the assessee for all the 3 assessment years had been allowed. Being aggrieved by the order passed in appeals, the revenue had filed appeals before the Tribunal. The Tribunal had dismissed all the appeals upholding the view expressed by the CWT (Appeals).

6. In the above-referred circumstances, the questions referred to hereinabove, are to be answered by this court.

7. Shri M.R. Bhatt, learned counsel, has made all possible efforts to support the view expressed by the WTO and has tried to submit that the common order passed by the Tribunal for all the 3 assessment years, confirming the orders passed by the CWT (Appeals), cannot be sustained.

8. We are not in agreement with the submissions made by the learned standing counsel for the reason that the land, which was subject-matter of the assessment, could not have been valued beyond Rs. 10 per sq.yd. because the said land could not have been sold by the assessee in open market. According to the provisions of the Ceiling Act, the assessee was to receive only a sum of Rs. 10 per sq.yd. in respect of the land in question. Looking to the settled principles of valuation, the assessing officer could not have arrived at a higher value of the land in question beyond Rs. 10 per sq.yd.

9. We have gone through the common order passed by the Tribunal for all the 3 assessment years. The said order refers to the judgment delivered by the Madras High Court in the case of Commissioner of Wealth-tax, Tamil Nadu-II v. K.S. Ranganatha Mudaliar and others, 150 ITR 619. Looking to the law laid down in the said judgment and on the basis of the settled principles of valuation, we cannot find any fault with the conclusions arrived at by the Tribunal.

10. Whenever there is any restriction on the transfer of any land, it is a matter of common knowledge that the value of the property or land, as the case may be, would be normally reduced. In the instant case, it was not open to the assessee to sell the land and, therefore, the value of the land in question cannot be more than what

the government was to offer to the assessee under the provisions of the Ceiling Act.

11. In view of the facts stated hereinabove, we are in agreement with the view expressed by the Tribunal and, therefore, we answer all the questions in the affirmative, i.e., in favour of the assessee and against the revenue.

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(K.M. Mehta, J.)

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